TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 734.

THE UNITED STATES, APPELLANTS,

vs.

J. D. TOWNLEY.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 14, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 734.

THE UNITED STATES, APPELLANTS,

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APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Petition	1	1
Traverse	8	2
Final judgment by the court	9	3
Application for allowance of appeal	10	3
Order of court allowing same	11	3
Findings of fact and conclusions of law	12	3
Opinion of the court	15	4
Opinion of Chief-Justice Drake	23	12
Certificate	24	12

1 *Petition.—Filed Jan'y* 14, 1869.

In the United States Court of Claims.

J. D. TOWNLEY
vs.
THE UNITED STATES. } No. 3860.

To the honorable the Court of Claims of the United States:

The petition of J. D. Townley, of the city of Washington, in the District of Columbia, respectfully represents, that, on the 1st day of Nov., A. D. 1866, he was employed by the Government of the United States as coppersmith on the Treasury extension, under A. B. Mullett, superintendent of said Treasury extension, in the said city of Washington, at the agreed sum and price of three and one-half dollars per day, and that he continued in the employ of the said Government of the United States until the thirtieth day of June, 1867, and receiving from the said Government of the United States the aforesaid sum of three and one-
2 half dollar' per day as a compensation for said services, which was regularly paid him by S. M. Clark, disbursing officer, and that he thereby became and was an employee in the office of the Treasury extension, in the city of Washington aforesaid.

Your petitioner further represents that the Congress of the United States did, at the second session of the Thirty-ninth Congress, pass a joint resolution giving additional compensation to certain employees in the civil service of the United States, which joint resolution was approved by the President of the United States on the 28th day of February, 1867, and is in the words and figures following, to wit:

"That there shall be allowed and paid out of any money in the Treasury not otherwise appropriated, to the following-described persons now employed in the civil service of the United States, at Washington, as follows: To civil officers and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to
3 be computed on the gross amount of the compensation received by them; and employees, male and female, in the Executive Mansion and in any of the following-named Departments, or any Bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post-Office, Attorney-General's, Agricultural, and including civil officers and temporary and all other clerks and employees, male and female, in the office of the Coast-Survey, Naval Observatory, Navy-Yard, Arsenal, Paymaster-General's, including the division of referred claims, Commissary-General of Prisoners, Bureau of Refugees, Freedmen and Abandoned Lands, Quartermaster's, Capitol and Treasury Extensions, City Post-Office, and Commissioner of Public Buildings; to the photographer of the Treasury Department, to the superintendent of meters, and to lamplighters under the Commissioner of Public Buildings, an additional compensation of twenty per centum on their respective salaries, as fixed by law, or, where no salary is fixed by law, upon their pay respect-
4 ively, for one year from and after the 30th day of June, 1866; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such persons is so entitled to receive for services in any or all of said Departments or offices within said year: Provided, That, the above-named additional compensation to the employees of the Patent-Office shall be paid out of the funds of said office: Provided further, That this resolution shall not apply to persons

whose salaries, as fixed by law, exceed three thousand five hundred dollars per annum."

And your petitioner further respectfully represents, that during the year commencing the thirtieth day of June, A. D. 1866, and ending on the thirtieth day of June, A. D. 1867, the gross amount of compensation allowed and paid him by the Government was six hundred and sixty dollars.

5 That by the terms of the foregoing joint resolution of Congress *of* the United States agreed to pay your petitioner the additional twenty per centum on the aforesaid sum received by him as aforesaid, from the thirtieth day of June, 1866, to the thirtieth day of June, 1867.

Your petitioner further respectfully represents that, believing himself entitled to the said additional compensation under said resolution, he made application to the proper officer of the Treasury Department having the power to decide upon his application, to wit, the First Comptroller thereof, for payment of the same, but without success, that officer deciding that your petitioner did not come within the resolution referred to.

Your petitioner further respectfully represents that he has at all times borne true and faithful allegiance to the Government of the United States, and that he has not in any way or manner voluntarily aided, abetted, or given encouragement to rebellion against it.

6 Your petitioner therefore pays judgement against the United States for the sum of one hundred and thirty-two dollars, the amount of twenty per centum on said six hundred and sixty dollars compensation received by him as aforesaid.

(Signed) J. DANIELS,
Attorney for Claimant, Washington, D. C.

DISTRICT OF COLUMBIA,
County of Washington, ss:

J. Daniels, being duly sworn, deposes and says that he is the attorney for the above-named claimant; that no assignment or transfer of said claim or any part thereof, or any interest therein, has been made, except as in said petition stated; that said claimant is justly entitled to the amount claimed from the United States, after allowing all just credits and offsets, and that deponent verily believes the facts stated in said petition are true.

(Signed) J. DANIELS.

7 Sworn & subscribed to before me this 11th day of January, 1869.

[SEAL.] (Signed) THOMAS J. MYERS,
Notary Public.

8 In the United States Court of Claims, December term, A. D. 1873.
Filed Mar. 28, 1874.

J. D. TOWNLEY
vs.
THE UNITED STATES. } No. 3860.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of one hundred and thirty-two dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

9 In the Court of Claims.

J. D. TOWNLEY
vs.
THE UNITED STATES. } No. 3860.

At a Court of Claims held at the Capitol, in the city of Washington, the 30th day of March, A. D. 1874, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said J. D. Townley have and recover of and from the United States the sum of one hundred and twenty-five dollars sixty-five cents, ($125.65.)

10 In the Court of Claims of the United States, December term, 1873.

J. D. TOWNLEY
vs.
THE UNITED STATES. } No. 3860.

From the judgment rendered in the above-entitled cause on March 30, 1874, in favor of claimant, the defendants, by their Attorney-General, on the 13th day of April, 1874, make application for, and give notice of, an appeal to the Supreme Court of the United States, the judgment in said cause being such as will affect a class of cases.

A. D. R.

JOHN GOFORTH,
Ass't Attorney-General.

Filed April 13, 1874.

It is hereby certified that the judgment on the above cause is one which will affect a class of cases.

C. D. DRAKE, *C. J.*

11 Ordered: That the appeal be allowed as prayed for.
By the court.

APRIL 13, 1874.

12 Court of Claims.

J. D. TOWNLEY
vs.
THE UNITED STATES. } No. 3860.

Findings of fact and conclusions of law.—Filed March 30, 1874.

This case having been heard before the chief justice and judges of the Court of Claims, at the city of Washington, on the 21st day of January,

1874, the court, after due deliberation upon the proofs and evidence given at the trial, does hereby, at the time of rending judgement, find the following facts:

During the fiscal year beginning on the 1st day of July, 1866, and ending on the 30th day of June, 1867, the claimant was employed as coppersmith on the Treasury extension in the city of Washington, upon daily wages. He was employed and paid at the highest market price then paid by private parties for similar services, and was in the
13 service of the Government on the 28th February, 1867. During the fiscal year he worked one hundred and seventy-nine and one-half days, for which he was paid at the rate of $3.50 per day, amounting in the aggregate to $628.25, twenty per cent. of which is $125.65.

Specific appropriations were made by Congress, prior to the time that the claimant's services were rendered, for the construction of the north wing of the Treasury building. Under such appropriation contracts were entered into for finished work, comprehending both materials and labor; materials separately, and labor by the day separately. The services claimed were rendered under the latter contract. The consideration agreed upon was the highest market wages. The payments upon these contracts were made from the specific appropriation above mentioned in the same manner as the expenditures for the construction of all other buildings erected under the supervision of the supervising architect of the Treasury, and upon the foregoing facts the Court
14 of Claims, for the purpose of an appeal, decides, as

CONCLUSION OF LAW.

That the claimant was in the civil service of the United States within the meaning of the joint resolution 28th February, 1867, (14 Stat. L., p. 569,) and should recover twenty per cent. upon the compensation set forth in the foregoing finding.

By the court.

15 United States Court of Claims.

THE TWENTY PER CENT. CASES.—FILED MARCH 30, 1874.

GEORGE A. BELL
v.
THE UNITED STATES, (AND OTHER CASES.)

NOTT, J., delivered the opinion of the court:

When the cases arising under that statute which has been familiarly known as the twenty per cent. resolution, February 28, 1877, (14 Stat. L., p. 569,) first came before this court, it was held that they fell into two general classes. The first, it was thought, consisted of those persons who were "in the civil service of the United States, at Washington," and whose salary or pay was "directly fixed or indirectly limited by law." The second class, it was supposed, consisted of those persons whose services were such as might be rendered to any employer; whose wages came under the restrictions of no statute or departmental regulation, and who received for their services whatever such services might be worth in the place where they were rendered. There are indeed services not necessarily connected with the Government as a government, such as those of the public gardeners, but Congress have attached to them the characteristic which distinguishes the civil service from

ordinary employments, namely, a fixed and arbitrary rate of compensation. Such cases, we thought, fell within the first class, not because of the nature of the services rendered, but because Congress had placed them there by making them quasi public employments.

The first class of cases (including those just referred to) was carried to the Supreme Court by appeal, and the judgment of this court affirmed. The second class has never been taken to that tribunal. But it is said that the attention of the Supreme Court was called to them upon the argument of the first, and that the broad language used in the opinion of that court was intended to cover all cases that could possibly arise under the joint resolution. The Supreme Court does indeed say that persons are "properly in the civil service, if they were employed by the head of the Department, or of the Bureau, or any division of the Department charged with that duty, and authorized to make such contracts, and fix the compensation of persons employed, even though the particular employment may not be designated in any appropriation" act. And the court adds that "many persons not employed as clerks and messengers of the Departments are in the public service by virtue of an employment by the head of the Department or by the head of a Bureau of the Department authorized by law to make such contracts, and such persons are as much in the service, within the meaning of the joint resolution, as the clerks and messengers employed in the rooms of the Department building." The twenty per cent. cases, (7 C. Cls. R., p. 290.)

16 Notwithstanding the scope of this language, and the assertion that the attention of the Supreme Court was called to the numerous classes of cases awaiting decision here, we remain of our former opinion, namely, that the cases fall into two classes: the former consisting of persons whose compensation was arbitrarily fixed or indirectly limited by Congress; the latter, of persons whose wages were unrestricted and determinable only by their highest market-value at the place where they were rendered.

As to the reasons upon which this distinction stands, it is sufficient to quote what this court formerly said in Baker's case, (4 C. Cls. R., p. 227:)

There have always been, and were when the joint resolution was passed, two classes of persons in the employment of the Government. The first consists of those whose services are special, and to be distinguished from ordinary employments. They make up the civil service of the United States, and their compensation is directly fixed, or indirectly limited, by law. The second class consists of those persons whose services are such as might be rendered to any employer; whose wages come under the restrictions of no statute, and who receive for their services whatever such services may be worth in the place where they happen to be rendered. For services which are connected with the Government, as a government, and which, being special, have no market-value, the salary, pay, or other compensation is necessarily fixed by law; but where the Government has become a builder or manufacturer, it has never attempted to regulate by law the fluctuating value of labor, which, as with other commodities, competition and the business of the country would control despite legal restriction, nor to overbid other employers in the labor market, but has paid to its artisans and workmen the same prices for their industry which other employers might be paying for the same services in the same place. Generally this policy has been left to regulate itself between the demands of labor on the one hand, and the restraining duty of the officers charged with the hiring of

workmen on the other. Occasionally it has been prescribed by law. Concerning persons in the civil service, we find in the statutes constant reference to the "pay authorized by law." In the act 23d April, 1854, (10 Stat. at L., 276,) to that of "messengers" and "watchmen" of the different Executive Departments of the Government in Washington, and to that of the "public gardener" and the "police at the Capitol;" in the act 18th August, 1856, (11 Stat. L., 145,) to that of "laborers in the employment of the Government in the Executive Departments, and on the public grounds in the city of Washington," which, for example, the act fixes at "an annual salary of $600 each;" in the act 14th March, 1864, (13 Stat. L., § 6,) to that of "females whom the heads of Departments are authorized to employ" "at an annual compensation not exceeding 600;" in the act 2 March, 1865, (13 Stat. L., 445, 450,) to that of "temporary clerks," with a special proviso that they "be classified according to the character of their services." But, with respect to persons not in the "civil service," we find no provisions of law regulating their pay except such as direct that "the hours of labor and the rate of wages of the employés in the navy-yards shall conform, as nearly as is consistent with the public interest, with those of private establishments in the immediate vicinity of the respective yards." Act 16th July, 1862, (12 Stat. L., 587.)

At the time when the joint resolution was passed the compensation of the great body of persons in the civil service at the seat of Government had been left for a long time unrevised, and had fallen into great disorder.

17 By reason of the depreciation of gold and silver and the still greater depreciation of paper money, wherewith these persons were paid, their compensation had become incommensurate with the increased expenses of the times, and particularly with the increased values set upon property and tenements in the city of Washington, and had fallen far behind the increase allowed by the Government to that other body of persons whose rate of compensation kept pace with that paid by private employers. Thus, the very officer of the Treasury whose decision stopped the payment of these claims, and upon whose judgment depended in this matter alone more than half a million dollars, was at that time receiving exactly the same compensation received by one of these claimants, and the average of them all fell but 30 per cent. below his salary. That salary had not been increased since 1799; act 2d March, 1799, (1 Stat. L., 729;) and but once since the office of Comptroller of the Treasury was established in 1789; act 2d September, 1789, (1 Stat. L., 65.) On the contrary, it had been diminished by being paid in depreciated paper-money instead of gold and silver. The members of that Congress which fixed the Comptroller's salary at $3,500 a year, themselves received but about $1,200. The per diem allowance received by them in fact amounted, for the three laborious sessions of their two years' term of office, to $2,406. But the pay of that Congress which passed this 20 per cent. resolution had advanced to $5,000 a year exclusive of mileage. The expenses of life had also more than trebled between 1799 and 1867. Taking them at the standard, we may estimate that the Comptroller's salary in 1867 should have been $9,000 a year in gold; or, taking the congressional salary at the standard, we may conclude that if the Congress which increased the pay of Comptroller in 1789 had legislated in 1867, they would have advanced the salary to $12,000 a year in Treasury notes.

A third standard of comparison may be found in the wages paid to these claimants, for it is pretty certain that the artisans of that day would not have received (in gold) a fourth part of the Comptroller's sal-

ary; whereas these have received in the average 70 per cent. of his salary, and in one case an amount exactly equal.

In these intervening seventy years the daily toil of the artisan has diminished, but the labor and duties and responsibilities of the Comptroller's office have been vastly augmented. They embrace the work of examining all accounts settled by the First and Fifth Auditors, and of certifying the balances arising thereon to the Register; of countersigning all warrants drawn by the Secretary of the Treasury which may be warranted by law; of reporting to the Secretary the official forms to be issued to the different officers for collecting the public revenue, and the manner of keeping and stating the accounts of the persons employed therein; of superintending the preservation of the public accounts subject to his revision, and providing for the payment of all moneys which may be collected; of superintending the recovery of all debts due to the United States, and directing legal proceedings to enforce their prompt payment, and of laying before Congress annually a list of such officers as shall have failed to make the settlements required by law. (Act 3d March, 1817, 3 Stat. L., 367, §§ 8, 10, 13, 14.) The single requirement that all warrants drawn by the Secretary of the Treasury "which shall be warranted by law" be countersigned by the Comptroller, obliges that officer to pass, to a certain extent, upon the legality of every payment made by the United States; and in the fiscal year to which this twenty per centum applies there were 40,814 warrants drawn, requiring of the Comptroller 40,814 signatures, given with his own hand.

But these cases furnish a further illustration. They disclose forty-
18 five bank-note printers, in a Bureau of the Treasury, whose yearly wages amounted to $111,024. The largest received by any one man was $3,500; the smallest, $2,039; three of the forty-five were above $3,000; fifteen above $2,500; all but nine above $2,200. In the same Bureau the employés of the civil service, who were watchmen or laborers, received but $600; those who were messengers, but $840; those who were clerks, but $1,200, $1,400, $1,600, or $1,800. The superintendent of printing, under whom these men worked, received but $2,000; the chief of the currency division, by whom they were employed, but $3,000. The deputy comptroller of the currency, an official whose responsibilities are of so grave a nature that he is required by statute to give security to the amount of $50,000, received less than the wages paid to one-third of the workmen; and, finally, chiefs of divisions in the Auditors' and Comptrollers' Offices who pass in a single year upon accounts literally embracing millions of dollars, received less than the least of these claimants.

The salaries and pay which Congress undertook to increase by law were the salaries and pay which were regulated by law. Cases, indeed, are spoken of "where no salary is fixed by law," but those were the cases of temporary clerks, persons in the civil service, and whose salaries, though not directly "fixed," were nevertheless indirectly limited by law. Persons also are enumerated in certain military and naval offices, but they were persons who, acting under military and naval authority, still were, as we held in Clark's case, (1 C. Cls. R., p. 145,) "persons engaged in the civil service." The joint resolution was not a wild gratuity, a naked, needless gift of the hard-paid taxes of the nation, but was founded on an intent to do justice to those persons in the civil service who had not been compensated justly for their services. The joint resolution was therefore a remedial statute to be construed by the well-known tests, "the old law, the mischief, and the remedy." The "old law" here was the various statutes establishing, regulating, and limiting the compen-

sation of persons in the civil service. Where there was no old law, and employés received for their services what they were worth among men, the new law did not apply; they who had no wrongs to be righted needed not the remedy which it provided. The "mischief" was the unjust compensation which by the changed circumstances of the nation had come to be paid to persons in the civil service, occasioning irritation, discontent, and a sense of wrong in the minds of men, and leading to bribery, extortion, and other evil practices. The "remedy" intended by the joint resolution lies not in flinging the money of a people struggling with a great debt to those who received for their services their highest market-value, merely because such services chanced to be rendered at the seat of Government, where persons in the civil service chiefly are employed, but in faithfully extending the statute to all those actually in the "civil service of the United States," whose compensation was restricted by law, and who, being circumscribed in their means of subsistence by the arbitrary operation of law, could look only to the law for the bettering of their condition. And therefore it is that the joint resolution, though loosely and recklessly drawn, is still careful to say that the "20 per centum" to be allowed and paid shall be to "persons now employed in the civil service of the United States."

The phrase limits and controls all that follows. The "clerks, messengers, watchmen, and employés" mentioned, are not all the persons employed by the Government at Washington, but only the persons employed "in the civil service" of the United States, and whose service was rendered within the functions of the offices named. These claimants
19 were not persons in the civil service; they were simply hired by the job, or the day, to do common mechanical labor, and paid for their work all it was worth in the market. Instead of being public servants, they were merely public contractors. The Government owes them no gratuities more than it owes all other contractors, and it has paid to the least of them more than double the average which it pays to persons in the civil service at Washington. "It is the business of the judges so to construe the act as to suppress the mischief and advance the remedy;" and we shall most assuredly do so if we extend it to all who are both within the letter and the spirit of the joint resolution, and to none beside.

The cases now before the court present several distinct questions additional to the general question before considered, and fall into the following classes:

I.—*Plate printers in the Bureau of Engraving and Printing in the Treasury Department.*

These men were employed as printers and paid at an agreed rate for the amount of work done. They were allowed to employ assistants, who were paid from their earnings, though paid directly by the disbursing officers of the Department, the sums thus paid being deducted from the gross earnings of the claimants. The evidence before us does not show the amount of the gross earnings, but only of the balance or net earnings after the assistants have been paid. If these men are entitled to recover the twenty per cent., it seems clear to us that it must be estimated and can only be estimated upon the gross earnings paid to them by the Government. The Government was a stranger to their assistants in a legal sense, and was concerned only in the gross amount paid to them. It is not pretended that the assistants could in their turn come in and claim twenty per cent. upon the amount allowed them by their employers, the plate printers. And it is to be noted that the net

earnings in some cases exceeded $3,000 per annum, and non constat but that the gross earnings may have exceeded $3,500 per annum.

The joint resolution is limited by the terms of its second proviso to persons "whose salaries as fixed by law" do not "exceed $3,500 per annum." Did Congress ever contemplate giving twenty per cent. upon the earnings of one man whose compensation exceeded $3,500 per annum, and withholding it from another whose salary was fixed by law above that amount? We think not. The proviso indicates that the pay to be increased was pay "fixed by law;" and our conclusion is, that though these men were employés in one sense within an Executive Department, yet they were not persons "in the civil service of the United States" within the meaning of the joint resolution, but contractors whose contract work from prudential reasons was brought within the immediate supervision of an Executive Department.

II.—*Laborers on the Treasury Extension.*

The evidence of the Supervising Architect in this class of cases very clearly illustrates the actual existence of the legal classification which this court, as before stated, originally made. He says: "The labor performed by them was not rendered as duties of civil employés for whose services as such any appropriation for the civil service of the Government at Washington provided compensation. Specific appropriations were made for the construction of the north wing of the Treasury building. Under such appropriations contracts are entered into for finished work, comprehending both materials and labor; materials separately, and labor by the day separately. The services of the parties in question were rendered under the latter contract. The consideration agreed upon for their labor was the highest market-wages. The payments upon each of these contracts were made from the specific appropriations above mentioned." We think that persons whose services were rendered under contracts for "finished work," at the "highest market-wages," cannot be considered as employés in the civil service.

III.—*Laborers in the Commissary Department.*

It is noticeable that while the Quartermaster's Department is enumerated in the joint resolution, and also the Commissary-General of Prisoners, yet that the Commissary Department is unnamed. These cases present the question whether the Commissary Department is a part of the Army or a Bureau of the War Department. The earlier and the later statutes generally treat the Commissary-General as simply a military officer, though there is one statute which indicates that the office is a "military bureau" of the War Department. Act 4th July, 1836, (5 Stat. L., p. 117, § 5.) The joint resolution extends to "the following-named Departments or any Bureau or division thereof," and among these Departments is the War Department. If it was intended to include under the term "Bureau" or "division" the Commissary Department, it was needless to specifically name the Quartermaster's Department. On the contrary, it is not easy to understand why it should have embraced the other military bureaus, such as the Paymaster-General, the Commissary-General of Prisoners, the Bureau of Refugees, the Quartermaster's, and have omitted the Commissary Department. If the usual rule of construction be applied, the naming of some of these military bureaus in the joint resolution must be deemed to exclude those not named. But it is at the same time a moral certainty that Congress never intended to exclude one military bureau while it benefited all the

rest. The history of this piece of legislation shows that it was made up of numerous amendments, hastily thrown together, and our conclusion is that it was intended to apply to the Commissary Department.

IV.—*Laborers in the Medical Department of the Army.*

The same question and the same embarrassment of construction arise with regard to this class of claimants that have been pointed out in the preceding class. The Surgeon-General in an official report on this subject, says: "The Medical Department is not made a bureau of the War Department by any law known to me. By the term 'Medical Department,' or more correctly 'Medical Department of the Army,' is understood not a bureau or office, but the entire organization of means and appliances for conserving the health of the Army and taking care of the sick and the wounded." He adds: "The Surgeon-General's Office is recognized in the annual appropriations made by Congress as a part of the War Department, but the claimant was not in the Surgeon-General's Office." We think that this latter fact distinguishes these cases from the preceding, and that the parties were civil employés of the Army and not in any sense in the civil service.

21 V.—*Laborers employed by the Quartermaster's Department at Washington, but whose services were rendered at Arlington, etc.*

However inconsistent it may seem for Congress to have allowed an increase of compensation to one man employed by the Quartermaster's Department, on this side of the Potomac, and to have withheld it from another, employed by the same officer, but sent to the other side of the river, it is clear that the joint resolution is limited by its terms to "persons now employed in the civil service of the United States at Washington." A person employed at Arlington is certainly not employed at Washington, although, as is claimed here, the hiring and the paying were both done in Washington. The fact that the contract of service had its inception here, and that final performance under it, that is to say, payment, was also made here, does not place the employment here; and we cannot, by any liberality of construction, extend the joint resolution to a person whose employment was elsewhere.

VI.—*Employés of the Secret-Service Division of the Treasury Department.*

In this class the persons employed were under the direction of the Solicitor of the Treasury, and the duty performed appertained to the Treasury Department. It consisted chiefly in the detection of counterfeiters, and the parties "were stationed at no particular place except as their duties required." As we have previously held, in the case of Marche, (5 C. Cls. R., p. 525,) it was not the accidental presence of the claimant in the city of Washington which entitled him to the benefits of the joint resolution, but it was necessary that the functions of his office lie within the Treasury at the seat of Government. We do not understand that these detectives were necessarily employed here, nor, as a matter of fact, that they actually remained here. Their services were of a migratory character, and probably the smallest part of their employment was that which was rendered in Washington. Still, while liable to be sent elsewhere, they were stationed here. This was their only permanent place of official abode. Their salaries were fixed by law;

they were in the civil service as assistants of the Solicitor of the Treasury; and they were in the civil service in a greater or less degree at Washington. Our conclusion is that they are entitled to recover.

VII.—*Cases where the statute of limitations is pleaded.*

A large number of the cases now before the court, including some in the preceding classes, were not brought until the 30th of June, 1873. The defendants set up the statute of limitations as to the eleven-twelfths of each demand. It is conceded that the suit was brought in time, so far as the last month's pay is involved, but it is insisted that the suit is barred as to all pay accruing before the first day of June, 1867. If the joint resolution, contrary to our construction of it, extends to all employés of the Government, as well as to those in the civil service proper, it is evident that this theory of monthly payments cannot be universally applied. Some of the men were employed by the day, and some by the piece, and the question must arise whether a cause of action accrued to them strictly, as each day's work was done, or each piece of work finished, or whether there was a running account extending to the date of the last item. But with regard to those persons actually in the civil service, and entitled beyond question to the benefits of the joint resolution, it is undeniable that their salaries were generally paid monthly. But on
22 looking into the statutes we do not find that there is any provision of law to that effect. The salaries are almost invariably spoken of as "annual salaries." Occasionally there is some provision, as in the case of the judiciary, that they be paid quarterly; but ordinarily the time of payment is not fixed by law. Further than this, the joint resolution does not designate a time of payment. "There shall be allowed and paid," it says, "an additional compensation of twenty per centum on their respective salaries, as fixed by law, or, where no salary is fixed by law, upon their pay, respectively, for one year." And it further provides that where a person "shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be paid on the amount such person is so entitled to receive for services within said year." It is, therefore, by no means clear that any portion of the twenty per centum was payable until the expiration of the fiscal year, and we are inclined to say, for these reasons, that a party's claim did not accrue until the fiscal year had ended.

Our conclusion, consequently, is that in five of the preceding classes of cases the Government is entititled to judgment. But the language of the Supreme Court before quoted is broad enough to warrant an inferior tribunal to come to a directly opposite conclusion. We are, however, inclined to believe that the Supreme Court could not have intended that its opinion should be applied to cases so inherently different from those before it as we consider the most of the present cases to be. Nevertheless, we are not unmindful of the fact that our conclusion is not free from doubt, and that the claimants, by reason of the smallness of their respective demands, have not the right of appeal to the Supreme Court. We therefore direct a judgment to be entered pro forma against the Government in one of each class of cases, so that the correctness of our conclusions may be reviewed by the Supreme Court. The residue of the cases which have been submitted will remain under advisement until the decision of the Supreme Court in those appealed.

Judgments will be entered for the claimants under this opinion in the following cases:

George A. Bell vs. The United States for	$236 86
Patrick Welsh vs. The United States for	108 85
John Wild vs. The United States for	124 80
James Hannan vs. The United States for	84 00
O. A. Hoffman vs. The United States for	143 60
Thomas Dorkin vs. The United States for	137 62
Maurice Tucker vs. The United States for	360 00
John Smith vs. The United States for	71 00
John Donnelly vs. The United States for	65 80
J. D. Townley vs. The United States for	125 65
John Cullen vs. The United States for	206 96
Thomas Fugitt vs. The United States for	160 55
Cha's Wood vs. The United States for	67 68
Timothy Craven vs. The United States for	69 41

23 DRAKE, CH., J.:

I do not wish to be considered as taking part in the decision just read.

It is my opinion that the repeal of the joint resolution of February 28, 1867, left this court without jurisdiction of any action for the recovery of anything thereunder.

Filed March 30, 1874.

24 In the Court of Claims.

J. D. TOWNLEY
vs.
THE UNITED STATES. } No. 3860.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon, of the application of the Attorney-General for the defendants for the allowance of an appeal, as filed in the clerk's office April 13, 1874, and of the order of the court of April 13, 1874, allowing the same, of the findings of fact by the court, and the conclusion of law thereon, on which the court founded its judgment, of the opinion of the court, and of the opinion of Chief Justice Drake.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington, this 14th day of April, 1874.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 734. The United States, appellants, *vs.* J. D. Townley, Court of Claims, filed 14th April, 1874.